Sunshine Act Meetings

Federal Register
Vol. 53, No. 138
Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat on (202) 634–6748.

Date: July 14, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued July 14, 1988.

[FR Doc. 88–16243 Filed 7–18–88; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 25, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16287 Filed 7–15–88; 4:09 pm]

BILLING CODE 6210–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 6, 1988, 53 FR 26128.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 13, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following Item has been added to the agenda of July 13, 1988:

Item No., Docket No. and Company

M–7—CP88–532–000 and RP86–169–000, ANR Pipeline Company
M–7—CP86–589–000, Colorado Interstate Gas Company
M–7—RM87–5–000, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–16301 Filed 7–15–88; 4:07 pm]

BILLING CODE 6717–02–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, July 26, 1988 at 4:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731–TA–411 (P) (Calcined Bauxite Proppants from Australia)—briefing and vote.
6. Inv. No. 731–TA–370–380 (F) (Certain Brass Sheet and Strip from Japan and the Netherlands)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

July 12, 1988.

[FR Doc. 88–16295 Filed 7–15–88; 4:09 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, July 28, 1988 at 4:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. Nos. 701–TA–287 (F) and 731–TA–378 (F) (Certain Electrical Conductor Aluminum Redraw Rod from Venezuela)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252–1000.

Kenneth R. Mason,

Secretary.

July 12, 1988.

[FR Doc. 88–16296 Filed 7–15–88; 4:09 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Thursday, July 21

10:00 a.m.
Briefing on Current Status of Information Regarding the Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)
2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting)
3:30 p.m.
Affirmative-Discussion and Vote (Public Meeting) (if needed)

Friday, July 22

10:00 a.m.

Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting)

Week of July 25—Tentative

No Commission meetings scheduled for Week of July 25.

Week of August 1—Tentative

Wednesday, August 3

2:00 p.m.
Annual Briefing by NUMARC (Public Meeting)

Thursday, August 4

2:00 p.m.
Briefing on the Status of Sequoyah I (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 5

10:00 a.m.
Briefing on Status of Efforts to Enhance Safety of Users of By-Products Materials (Public Meeting)

Week of August 8—Tentative

Tuesday, August 9

10:00 a.m.
Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting)

Wednesday, August 10

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting)

Thursday, August 11

10:00 a.m.
Briefing on Statue, Results, and Implementation of B&W Reassessment (Public Meeting)
2:00 p.m.
Follow on Briefing on Implementation of Severe Accident Policy (Public Meeting)
3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Pending Investigations (Closed—Ex. 5 & 7) was held on July 12.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,
Office of the Secretary.
July 14, 1988.

[FR Doc. 88–16289 Filed 7–15–88; 4:07 pm]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 53, No. 138
Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 87N-0091]

Current Good Manufacturing Practice Regulations for Certain Blood and Blood Components

Correction

In proposed rule document 88-13975 beginning on page 23414 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23414, in the third column, in the fourth paragraph, in the fifth and sixth lines, "21 U.S.C. 351(H)" should read "21 U.S.C. 351(h)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0025]

Biological Resources, Inc.; Opportunity for Hearing on Intent To Revoke U.S. License No. 915

Correction

In notice document 88-13985 beginning on page 23453 in the issue of Wednesday, June 22, 1988, make the following corrections:

1. On page 23453, in the second column, in the first complete paragraph, in the fifth line from the bottom, "electrophoresis" was misspelled.

2. On page 23454, in the first column, in the fourth line, "heading" should read "hearing".

3. On the same page, in the same column, in the 20th line, after "determination" insert "of wilfulness was based on the deficiencies".

4. On the same page, in the second column, in the last paragraph, in the second line from the bottom, "Commission" should read "Commissioner".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0050]

Investigation of Drugs in Humans; Availability of Revised Clinical Guideline

Correction

In notice document 88-13982 beginning on page 23456 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23456, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fifth line, "DMRD's" should read "DMARD's".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-08-4212-13; A-18992]

Exchange of Public Land and Private Mineral Estate in Mohave County, AZ

Correction

In notice document 88-14693 appearing on page 24802 in the issue of Thursday, June 30, 1988, make the following corrections:

1. In the first column, in the third line from the bottom, "N½S½N½NW¼S W¼" should read "N½S½N½N½N W¼SW¼".

2. In the third column, the 25th line should read "Sec. 19, lots 1 and 2, E½, E½NW¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 943-08-4220-10; CA 17849]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In the issue of Monday, June 27, 1988, on page 24171 in the first and second columns, a correction to FR Doc. 88-11820 appeared incorrectly and should have appeared as follows:

In the second column, under T. 11 N., R. 2 W., in Sec. 10, the second line should read "½S½SE¼".

BILLING CODE 1505-01-D

federal register

Tuesday
July 19, 1988

Part II

Environmental Protection Agency

40 CFR Parts 117, 302, and 355
Reporting Exemptions for Federally Permitted Releases of Hazardous Substances; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[FRL-3207-3]

Reporting Exemptions for Federally Permitted Releases of Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or greater than its reportable quantity (RQ) shall immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound of hazardous substances, except those for which RQs have been established pursuant to section 311a(b)(4) of the clean Water Act. Section 102(a) authorizes the U.S. Environmental Protection Agency (EPA) to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment.

The notification requirement under sections 103(a) and 103(b) of CERCLA applies to any release of a hazardous substance "other than a federally permitted release." Section 101(10) of CERCLA defines "federally permitted release" in terms of the discharge requirements of a number of State and Federal programs. Section 107(j) of CERCLA also exempts a "federally permitted release" from liability under CERCLA for response costs and damages incurred due to the release.

The purpose of this rulemaking is to clarify the federally permitted release exemption from CERCLA release reporting and liability provisions. Today's proposed rule also addresses this exemption from the notification requirements under Title III of the Superfund Amendments and Reauthorization Act of 1986. The Agency also proposes in this rule to make conforming changes to the regulation (40 CFR Part 117) describing the notification requirements for releases of hazardous substances under section 311 of the Clean Water Act. Finally, this rulemaking addresses several issues related to which releases into the environment require notification under CERCLA.

DATES: Comments must be submitted on or before September 19, 1988.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are kept in Room LG-100, at the above address. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2463;

or the

RCRA/Superfund Hotline, 1-800/424-9356; in Washington, DC, 1-202/382-3000.

The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area, the number is 1-202/426-2675.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction and General Comments

A. Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.* (CERCLA or the Act), enacted on December 11, 1980, and amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substances" chiefly by reference to other environmental statutes with authority further granted to the U.S. Environmental Protection Agency (EPA) to designate additional hazardous substances under CERCLA section 102(a). The CERCLA list currently contains 721 hazardous substances.

Section 103(a) of the Act requires that, as soon as the person in charge of a vessel or facility has knowledge of a release of a hazardous substance from such vessel or facility in a quantity equal to or greater than the reportable quantity (RQ) for that substance, the person shall notify the National Response Center immediately. Section 102(b) of CERCLA establishes RQs for releases of hazardous substances at one pound, except for those substances whose RQs were established at a different level pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the EPA Administrator to adjust all of these RQs by regulation (see 40 CFR 302.4).

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

One of the exemptions from section 103 reporting requirements is for "federally permitted releases." The definition of "federally permitted release" in CERCLA section 101(10) specifically identifies releases permitted under other environmental statutes, including the following general types of releases:

- Discharges covered by a National Pollutant Discharge Elimination System (NPDES) permit, permit application, or permit administrative record;
- Discharges in compliance with a legally enforceable permit for dredged or fill materials under section 404 of the CWA;
- Releases in compliance with a legally enforceable Resource Conservation and Recovery Act (RCRA) hazardous waste management facility final permit;
- Releases in compliance with a legally enforceable permit under the

Marine Protection, Research, and Sanctuaries Act;

- Any injections of fluids authorized under federally approved underground injection control programs (including federally authorized State programs) pursuant to Part C of the Safe Drinking Water Act;
- Any air emissions subject to permit or control regulations under certain provisions of the Clean Air Act (CAA);
- Any injections of fluids or other materials authorized by applicable State law for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, or for other production or enhanced recovery purposes;
- The introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with pretreatment standards and a pretreatment program submitted to EPA for approval; and
- Any release of source, special nuclear, or byproduct material in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act.

In the May 25, 1983 Notice of Proposed Rulemaking (NPRM) (48 FR 23552) to adjust certain RQs, EPA explained the Agency's interpretation of each of the types of releases exempted by the definition of "federally permitted release." EPA has decided to repropose the rule for federally permitted releases today rather than publish a final rule because of the amount of time that has passed since the original proposal. Today's proposed regulation would add a definition of "federally permitted release" to 40 CFR 302.3, Definitions.[1]

EPA received many comments on various aspects of the federally permitted release exemption, most of which urged a broader interpretation of one or more of the exemption categories. General comments on the scope of the exemption are discussed below, followed by discussion of comments on specific types of federally permitted releases.

Several commenters discussed the potential duplication between CERCLA reporting requirements and reporting requirements under existing permit programs for releases exceeding levels set by the terms of the permit. These commenters suggested that, because permit programs already may require notification of a regulatory authority in the event of a release exceeding permit levels, such releases should be exempt from notification when permitted levels are exceeded by an RQ or more. CERCLA section 101(10), however, generally limits the federally permitted release exemption to those releases "in compliance with" permitted or regulatory requirements. A straightforward interpretation of the statute indicates that if a release exceeds permitted levels, it is not "in compliance with" the permit and cannot be "federally permitted." Therefore, if the amount of the release exceeding the permitted level, i.e., the portion of the release that is not federally permitted, is equal to or exceeds the RQ, the release must be reported immediately to the National Response Center. This approach also avoids the numerous and unnecessary reports that could be generated by the reporting of small permit excursions that are better addressed by the permitting authority.

EPA believes that its interpretation is required by the plain language of the statute and is essential to ensure adequate protection of public health and the environment. The Agency believes that CERCLA reporting and reporting under permit programs is not duplicative because there are significant differences between the purposes served by CERCLA notification and the purposes of permit programs. The permit notification requirements and the information that is reported under permit programs may differ from one program to another. If permit notification requirements were allowed to suffice for CERCLA notification, the information available to the CERCLA program on releases might be inconsistent and incomplete. Permit programs also differ in their reporting mechanisms and do not always require immediate notification. In some cases, releases in excess of permitted levels need only be reported at specific intervals (e.g., monthly). Moreover, releases in excess of permit levels are reported to different Federal and State authorities, depending upon the permit. CERCLA requires immediate notification to a central office, the National Response Center, as soon as the person in charge has knowledge of a release equal to or exceeding an RQ, so that timely response may be initiated if the appropriate government authority determines that the release may present substantial danger to public health or the environment.

Moreover, EPA is not convinced that requiring persons in charge of a vessel or facility to make additional telephone calls (to the National Response Center, the local community emergency coordinator, and the State emergency response commission) to a toll-free or local number constitutes an undue burden on the regulated community. The Agency seeks comments on its interpretation of the burdens and the benefits of requiring reporting under CERCLA and Federal or State permit programs.

Several commenters recommended that releases be considered federally permitted releases (and therefore exempt from CERCLA notification and liability provisions) if they are exempt from regulation by the statutes listed in CERCLA section 101(10). EPA believes that exempting such releases would be contrary to the purpose of the notification requirements, which is to protect human health and the environment by requiring that responsible authorities be notified of releases that may require a timely response. The exemption of a type of release from regulation under a particular statute may have little or no bearing on whether a Federal response action might be needed for a specific release.

Examples illustrate the disparate reasons for exemptions. For instance, owners or operators of certain solid waste disposal facilities that handle hazardous waste only from generators of less than 100 kg. per month of nonacutely hazardous waste (See 40 CFR 261.5) are exempt from the requirement to obtain a hazardous waste management facility permit under section 3005 of RCRA. The exemption is based on a balancing of the administrative burden of including such wastes in the Subtitle C system against the threat the Agency determined would be posed by disposing of the wastes in unpermitted facilities (45 FR 33066, 33102–33105 (May 19, 1980)). Certain types of hazardous waste recycling activities—for example, the act of reclamation of a hazardous waste or burning a hazardous waste in a boiler or industrial furnace to recover energy—are exempt from regulation while EPA determines appropriate regulatory regimes for these activities. (See 40 CFR 261.6 and 40 CFR Part 266). Under the CWA, electroplating facilities that produce 1000 gallons of effluent per day are exempted from effluent standards because compliance is economically infeasible for these small firms (39 FR 11510, March 28, 1974). In each instance, the release may require response action, and the fact that the release is exempted from the statutory requirements is not relevant to this determination. The Agency has determined, therefore, that releases exempted from regulation by the statutes listed in section 101(10) will

[1] Further, today's proposal revises the definition of "release" to reflect SARA amendments to CERCLA section 101(22).

not be considered federally permitted releases.

Although certain releases may not qualify as federally permitted, they may not pose a sufficient hazard to warrant reporting to the National Response Center. The Administrator will consider establishing an administrative exemption from CERCLA notification requirements if it appears that certain releases pose no hazard or pose a hazard only rarely and under circumstances that would not likely result in any action being taken to respond to the hazard. However, no such exemptions are proposed under this regulation.

One commenter requested that a release still be considered a federally permitted release when there is only a "technical" violation of permit conditions (i.e., where the violation relates to operating, monitoring, or reporting procedures and does not affect the character or quantity of the release). EPA agrees that notification of the National Response Center would be unnecessary in such a case and should be addressed by the permit programs, where appropriate, as a permit violation. If the characteristics of a release (both the substance involved and the quantity or concentration are in compliance with a permit described in section 101(10), CERCLA notification will not be required. However, to the extent that a release exceeds the permit limit with regard to the quantity of a hazardous substance, it will not be considered a federally permitted release and CERCLA notification will be required when the release of the hazardous substance exceeds its permitted level by an RQ or more. Some Federal permit programs do not include quantitative limits on the amounts of specific hazardous substances that can be released. Accordingly, no "permitted level" exists against which the released quantity can be compared to determine whether CERCLA notification is required (i.e., whether the permitted level has been exceeded by an RQ or more). In such cases, CERCLA notification will be required when the characteristics of the release are not in compliance with the permit (e.g., the allowable concentration of a particular constituent has been exceeded) and an RQ or more of a hazardous substance has been released.

Several commenters urged that various types of releases (such as all "routine" releases or releases covered by other permit programs) not mentioned in section 101(10) be considered federally permitted release. EPA cannot support this position. Federally permitted releases are specifically listed in section 101(10). This detailed list clearly indicated that Congress did not intend releases other than those listed in section 101(10) to be considered federally permitted and thereby exempt from CERCLA reporting and liability requirements.

B. Relationship to Reporting Under Title III

Title III of SARA (sections 301-329) addresses emergency planning and community right-to-know and provides, among other things, emergency and annual notification requirements in addition to those included in section 103 of CERCLA. EPA has provided (see 52 FR 13377, April 22, 1987; 52 FR 21152, June 4, 1987) and will continue to provide regulations and guidance on the Title III requirements as necessary and appropriate.

With respect to emergency notification requirements, section 304 of SARA provides release reporting requirements that parallel the requirements of section 103(a) but are intended to make release information immediately available to State and local emergency officials as well as Federal response officials notified under CERCLA section 103. In addition, section 304(a) requires reporting of (1) releases for which notification is required under section 103(a) of CERCLA, and (2) releases of "extremely hazardous substances" that are not hazardous substances under CERCLA but that "occur in a manner which would require notification under section 103(a)" of CERCLA. Federally permitted releases, as defined by CERCLA section 101(10), are not required to be reported under section 304 of SARA (see 52 FR 13383). To clarify the type of releases that are defined as federally permitted releases, and thereby exempt from SARA section 304 reporting, today's rule proposes to revise the applicability section of the regulation implementing section 304 (40 CFR 355.40(a)) to add the definition of "federally permitted releases" provided in this rule. Thus, the interpretation of federally permitted release proposed in today's rule will define clearly the scope of the releases reportable under SARA section 304. With respect to annual notification of toxic chemical releases required under SARA section 313, however, federally permitted releases are not exempt.

II. Elements of the Exemption

Each element of the federally permitted release exemption is discussed below. Relevant comments received on the may 25, 1983, NPRM pertaining to each element also are discussed.

Releases from Point Sources with National Pollutant Discharge Elimination System (NPDES) Permits. Introduction. Section 101(10) identifies three types of releases from point sources with NPDES permits as federally permitted releases:

(A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems * * *.

This language is identical to that used in section 311(a)(2) of the CWA to exclude these releases from the term "discharge" with respect to EPA's oil and hazardous substances spill response and prevention program. Furthermore, Congress intended, in enacting CERCLA section 101(10) (A), (B), and (C), that EPA's interpretation of the provisions under the CWA be continued under CERCLA. (See S. Rep. No. 848, 96th Cong., 2nd Sess. 47 (1980).) Reflective of Congressional intent, the Agency proposes today that the interpretation provided in the regulatory language and the preambles to the rules implementing the CWA section 311(a)(2) exclusions be applied to the same exemptions under CERCLA section 101(10) (A), (B), and (C).

The legislative history of the CWA explains that the purpose of the section 311 exemptions was to exclude from the spill response provisions of section 311 three types of discharges subject to regulation under other CWA provisions; specifically, section 402 NPDES permits and section 309 enforcement provisions. Senator Stafford explained that:

* * * we are attempting to draw a line between the provisions of the [CWA] under sections 301, 304, 402 regulating chronic discharges and 311 dealing with spills. At the extremes, it is relatively easy to focus on the difference but it can become complicated. The concept can be summarized by stating that those discharges of pollutants that a reasonable man would conclude are associated with permits, permit conditions, operation of treatment technology and permit violations would result in 402/309 sanctions; those discharges of pollutants that a reasonable man would conclude are episodic or classical spills not intended or capable of being processed through the permitted treatment system and outfall would result in

the application of section 311. (124 Congressional Record 37683 (1978).)

In 1979, the Agency promulgated 40 CFR Part 117, which contains CWA reporting requirements for discharges of hazardous substances (44 FR 50776, August 29, 1979). Section 117.12 provided a regulatory interpretation of the three exclusions to the defintion of "discharge" in 40 CFR Part 116 and CWA section 311(a)(2), and the preamble to the rule provided a detailed explanation of the three types of excluded discharges. In 1987, EPA amended the definition of "discharge" in 40 CFR Part 110, the discharge of oil regulation, to codify the same three CWA exclusions (52 FR 10712, April 2, 1987). The preamble to the oil discharge rule adopted the description of the three exclusions from the 1979 preamble to 40 CFR Part 117.

In today's rule, the Agency proposes to apply the existing interpretation of the three types of discharges that are excluded from coverage under CWA section 311 to the first three types of discharges under CERCLA section 101(10). Thus, this interpretation will apply to the following regulatory provisions: 40 CFR 110.1, 116.3, 117.12, 300.5, 302.3, and 335.40. The Agency, however, also is proposing to make two clarifying amendments to 40 CFR 117.12, as explained below, that also will be aplicable to the corresponding exemptions under 40 CFR Parts 110, 116, 300, 302, and 355.

In the paragraphs that follow, the three types of NPDES discharges that correspond to the federally permitted releases in CERCLA sections 101(10)(A), (B), and (C) are described. For simplicity, these discharges will be referred to as Type A, B, and C, respectively.

Type A Discharges. Type A discharges are those that are in compliance with an NPDES permit limit that specifically addreses the discharge in question. To qualify as a Type A discharge, the permit must either address the discharge directly through specific effluent limitations or through the use of indicator pollutants. In the case of the latter, the administrative record prepared during permit development must identify specifically the discharge of the pollutant as one of those pollutants the indicator is intended to represent.

Type B Discharges. Type B discharges are foreseeable (i.e., identified in the NPDES permit's development record) and flow into a facility's effluent treatment system designed to treat the discharge. This second type of discharge is limited to on-site spills to the permitted treatment system that were identified and considered in the issuance of the permit but are not subject to any specific effluent limitations. Discharges are included only where (1) the source, nature, and amount of a potential discharge were identified and made part of the public record, and (2) the permit contained a condition requiring that the treatment system be capable of eliminating or abating the potential discharge.

Therefore, if an on-site spill was processed through a treatment system capable of eliminating or abating the spill, and the spill is subject to a permit condition, a discharge resulting from the on-site spill would be subject to CWA sections 402 and 309 and would be a federally permitted release. If an on-site spill is not passed through a treatment system or is not otherwise treated in any way, the discharge resulting from the on-site spill is subject to CWA section 311 and is not a federally permitted release. Also, discharges that result from on-site spills that are passed through treatment systems (1) that have not been demonstrated as capable of eliminating or abating the discharge or (2) for which no permit condition exists are subject to CWA section 311 and are not federally permitted releases under CERCLA.

A "permit condition" would include the existence of a treatment system or release prevention plans and other best management practices designed to address the discharge. Best management practices are operating methods or procedures to prevent or minimize the potential for the discharge of toxic or hazardous substances from processes ancillary to the industrial manufacturing or treatment process. For example, a discharger has a drainage system that will route spilled material from a broken hose connection to a holding tank or basin for subsequent treatment or discharge at a specified rate. To be eligible as a Type B discharge, the discharger must identify specifically such a system in the permit application. The permit condition discussed in the application must be sufficient to treat the maximum potential spill from the identified source. Discharges that result from an on-site spill larger and more concentrated than the spill contemplated in the public record, and for which a condition was provided in the permit, will be subject to CWA section 311 and CERCLA notification and liability provisions (i.e., the discharge will not be a federally permitted release).

Today's rule proposes to amend 40 CFR 117.12(c) by deleting the phrase "whether or not the discharge is in compliance with the permit," for Type B discharges, to avoid confusion caused by the phrase. The phrase was originally included in the rule because Type B discharges are discharges that result from circumstances identified and considered in the issuance of a permit but that are not subject to any specific effluent limitations. The Agency is concerned that the phrase may be interpreted incorrectly to mean that Type B could refer to discharges in which the permittee did not satisfy the condition placed in the permit. Because the Agency believes that the phrase causes confusion, the Agency proposes to delete the phrase from the regulation. The Agency solicits comments on this proposed revision to 40 CFR 117.12(c).

Type C Discharges. Type C discharges are from a point source and are (1) continuous or anticipated intermittent discharges, (2) identified in a permit or permit application, and (3) caused by events occurring within the scope of the relevant operating and treatment systems. Included within the scope of this provision are chronic, process-related discharges resulting from periodic upsets in the manufacturing and treatment systems, for example, the discharge created by a system backwash. Discharges caused by spills or episodic events that release hazardous substances to the manufacturing or treatment systems are not Type C discharges. The language of 40 CFR 117.12(d) provides further examples of discharges that fit within the category: (1) Provided that an on-site spill is not the cause, contamination of noncontact cooling water or storm water; (2) an upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge; or (3) where the discharge originates in the manufacturing or treatment systems, a continuous or anticipated discharge of process waste water.

Amendment to 40 CFR 117.12. With respect to Type C discharges, the Agency also is proposing in today's rule to amend 40 CFR 117.12(d)(2)(iii) by deleting the term "operator error" from the description of "an upset or failure of a treatment system." [2] The reasons for

[2] Section 117.12(d)(2)(iii) presently states:

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, an operator error, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

the proposal to eliminate the term "operator error" are: (1) The use of the term "operator error" in describing an upset is inconsistent with the NPDES regulations (40 CFR 122.41) that provide that a discharge caused by an operator error is not an upset; and (2) the Agency believes that discharges caused by operator error are not likely to be "continuous or anticipated intermittent discharges," as provided by the statutory language. The Agency expects discharges caused by operator error to be episodic and unpredictable, as compared to discharges caused by system startups and shutdowns. The proposed deletion of the term "operator error" is intended to enhance the clarity and consistency of the regulatory language and is not meant to signal a change in policy. It is possible that under some circumstances an operator error may cause a failure of a treatment system or process, and produce a continuous or anticipated intermittent discharge. Such a discharge may meet the requirements for a federally permitted release. The term "upset" as used in 40 CFR Part 117, however, generally will be interpreted to be consistent with the term "upset" in 40 CFR Part 122, i.e., it does not include incidents caused by operational error. The Agency requests comments on its proposal to delete operator error from 40 CFR 117.12(d)(2)(iii).

Conclusion. Under both CWA section 311 and CERCLA, any discharge or release of a hazardous substance that is not federally permitted, as described above, must be reported immediately to the National Response Center if it exceeds permit limits by an RQ or more; if the hazardous substance discharge or release is not subject to a numerical permit limit, any discharge or release that triggers a permit violation and equals or exceeds an RQ must be reported immediately. Similarly, under 40 CFR Part 110, any oil discharge that exceeds permitted levels and causes an oil sheen must be reported immediately.

Discharges excluded from CWA section 311 coverage and defined as federally permitted releases under CERCLA sections 101(10) (A), (B), and (C) are subject to the CWA section 309 enforcement provision that provides EPA with the authority to issue compliance orders, bring civil actions, and impose criminal and civil penalties. In addition, under CWA section 311(b)(6)(D), if the Federal government incurs any costs of removal of discharges excluded by section 311(a)(2)(C), the Federal government can bring a civil action under the authority provided by CWA section 309(b) to recover such removal costs. Furthermore, under CERCLA section 107(j), the response costs incurred by the Federal government in connection with the federally permitted releases defined by section 101(10) (B) and (C) can be recovered through a civil action brought under the authority of CWA section 309(b).

Finally, all three exemptions raise the issue of timeliness of notification. The reporting requirements for releases exempted from CERCLA reporting and liability under section 101(10) (A), (B), and (C) and excluded from CWA section 311(a)(2) are subject to the 24-hour notification requirements under CWA section 402. The Agency acknowledges that Congress recognized that the 24-hour reporting requirement may "create gaps in action necessary to protect the public or the environment." (See S. Rep. No. 848, 96th Cong., 2nd Sess. 47 (1980).) The legislative history of section 101(10) suggests that the Agency could resolve this issue by amending the CWA section 402 reporting regulation to require that those releases excluded from CWA section 311 coverage and exempt from CERCLA reporting requirements be subject to an immediate notification requirement under the CWA section 402 NPDES regulations. (Ibid.) The Agency has not yet amended the NPDES regulations to require immediate notification of those releases exempt from section 311 and CERCLA. Before the Agency proposes to amend the CWA sectin 402 NPDES regulations (40 CFR Part 122) to revise the 24-hour notification requirement to an immediate notification requirement for the exempted releases, the Agency solicits comments on the "reporting gap," particularly examples of situations where the 24-hour notice was not sufficient to protect human health and the environment.

Releases Subject to CWA Section 404 Permits. Discharges that comply with a legally enforceable permit for dredge or fill materials under section 404 of the CWA also are federally permitted releases exempted from the notification requirements of CERCLA sections 103(a) and 103(b). Before issuing these permits, the government reviews the substances to be discharged. Permits allowing the discharge of hazardous substances are issued only if no significant degradation of the aquatic environment will result. This exemption applies to discharges in compliance with the terms and conditions of either an individual or a general CWA section 404 permit.

In regulations implementing section 311 of the CWA for hazardous substances, 40 CFR 117.12 (but not the regulations for oil in 40 CFR Part 110), EPA exempted from the notification requirement not only those releases that were in compliance with section 404 permits, but also those releases that were exempt from permit requirements under section 404 of the CWA (sections 404(f) and 404(r)). These latter releases are not "federally permitted releases" for purposes of CERCLA because section 101(10)(D) is limited to releases in compliance with a legally enforceable permit under section 404 of the CWA. The Agency interprets the CERCLA notification requirements to exempt only those releases whose environmental and health effects have been evaluated and determined to be allowable under the appropriate permit program.

Releases from Facilities with Final RCRA Permits. Releases in compliance with a legally enforceable RCRA treatment, storage, or disposal final permit are, pursuant to CERCLA section 101(10)(E), federally permitted releases when the hazardous substances released are specified in the permit and subject under the permit to a specific limitation, standard, or control procedure (see 40 CFR Parts 264 and 270). Identifying releases on the record during the permit process is insufficient to qualify them for the section 101(10)(E) exemption because, in order to be exempt, the substances must be specified in the permit and subject to some permit condition or control.

Four commenters requested that facilities with interim status pursuant to section 3005(e) of RCRA and 40 CFR Part 265 be included in the "federally permitted release" definition. Some of the commenters indicated that it may be some time before these facilities are issued final permits. The legislative history specifically rejects application of this exclusion to releases from facilities with interim status (S. Rep. No. 848, 96th Cong., 2nd Sess. 48 (1980)).

Releases Pursuant to Marine Protection, Research, and Sanctuaries Act Permits. Section 101(10)(F) of CERCLA includes, in the definition of a federally permitted release, releases in compliance with legally enforceable permits issued under section 1202 (EPA ocean dumping permits) or section 103 (Corps of Engineers permits for ocean dumping of dredged materials) of the Marine Protection, Research, and Sanctuaries Act. Pursuant to EPA regulations, applicants for ocean dumping permits must identify the physical and chemical properties of the materials to be discharged, and the permit must identify the materials that may be discharged (see 40 CFR Parts 221 and 227). Similar procedures and criteria

apply to permits for ocean dumping of dredged material (see 33 CFR Part 324). These EPA and Corps of Engineers permits cover substances that can be discharged lawfully. Dumping of hazardous substances not specifically, allowed in these permits is subject to the notification requirements of CERCLA section 103(a) because emergency response officials should be made aware of releases not evaluated previously by a permit program for health and environmental effects.

Underground Injections Authorized Pursuant to the Safe Drinking Water Act. CERCLA section 101(10)(G) exempts from the notification requirements "any injection of fluids" authorized under Federal injection control programs or State programs submitted for Federal approval pursuant to Part C of the Safe Drinking Water Act (and not disapproved by EPA).

EPA has published regulations establishing technical standards and criteria (40 CFR Part 146) and regulations governing approval of State programs and permit procedures (40 CFR Parts 122–124). Under the Safe Drinking Water Act, the States are to take the primary role in implementing the underground injection control program; EPA is to administer the program only if the State fails to submit an approvable program within a specified time period. Any underground injection of hazardous substances permitted under a State program that has been approved, or submitted and not disapproved by EPA, or permitted under an EPA-administered program, is considered federally permitted for purposes of CERCLA notification.

Emissions Subject to Clean Air Act Controls. Section 101(10)(H) of CERCLA provides an exemption for hazardous substance emissions that are subject to a Clean Air Act (CAA) permit or control regulation (see 40 CFR Parts 52, 60, 61, and 62). However, as stated in the preamble to the May 25, 1983 NPRM, for this exemption to apply, any such CAA controls must be "specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant." (See S. Rep. No. 848, 96th Cong., 2nd Sess. 49 (1980)). The CAA exemption, therefore, cannot be read broadly to cover any and all types of air emissions. Moreover, as today's proposed rule makes clear, for the exemption to apply, the emission must be in compliance with the applicable permit or control regulation.

Several commenters suggested that the clear and unequivocal nature of the statutory language made elaboration on the CAA exemption unnecessary. Generally, these commenters took the view that the CAA exemption covers nearly all air emissions because such emissions are in one way or another controlled by the CAA—either directly because they contain substances specifically regulated by the CAA, or indirectly, for example, through emission limitations established as part of State Implementation Plans (SIPs) approved under section 110 of the CAA. Some commenters even claimed that because controls could be developed for any hazardous substance, any release to the air is "subject" to CAA controls.

EPA does not agree that the broadest interpretations, under which virtually all air emissions including dangerous episodic releases would be exempt from CERCLA reporting requirements, could have been intended by Congress under section 101(10). Moreover, the exemption for "federally permitted releases" under CERCLA section 101(10) also applies to reporting of air releases to State and local governments under Title III of SARA. Title III, which is the Emergency Planning and Community Right-to-Know Act of 1986, was enacted in large part as a response to dangers posed by chemical air releases to surrounding communities, such as the catastrophic release of methyl isocyanate in Bhopal, India. Because Title III was intended to address particularly the dangers of air releases, interpreting the exclusion for federally permitted releases so that accidental air releases would not be reported locally would be directly contrary to the legislative purpose. Similarly, the purpose of notification requirements under section 103 of CERCLA is to ensure that the government is informed of any potentially dangerous releases of hazardous substances to the environment for which timely response may be necessary. Establishing a very broad interpretation of CAA controls, as requested by the commenters, could eliminate virtually any CERCLA reporting of air emissions and, thus, the potential for early Federal responses; such an approach would eviscerate not only the Congressional intent but also the major purpose of the section 103 notification requirement.

In addition, some commenters urged EPA to interpret the federally permitted release exemption to include any air emission from a permitted source. Some of the commenters used the word "reviewed" almost interchangeably with the word "permitted." A "reviewed" release is not necessarily a "permitted" release or a controlled release. A permitted release is an allowable release of a specific substance or emission. A reviewed release generally may be one of many releases from a permitted source that is being checked for compliance with a variety of laws and regulations. The inclusion of a pollutant is a SIP review provision is not equivalent to subjecting the pollutant to CAA requirements or controls "designed specifically to limit or eliminate" the pollutant. (See S. Rep. No. 848, 96th Cong., 2nd Sess. 49 (1980)). A reviewed release, therefore, is not necessarily a federally permitted release.

Several commenters stated that the air release exemption should apply broadly to substances such as volatile organic compounds (VOC) or total suspended particulates (TSP) regulated under the CAA (including those regulated under approved State programs). The commenters claimed that a permit or regulatory limit on such categorical emissions in effect constitutes a limit on each constituent in the group. EPA generally agrees with this position, but again is concerned that an overbroad interpretation of the air release exemption could result in nonreporting of dangerous chemical releases. A large release of a substance from a pressure release valve over a short period of time could be within a VOC limit established for a source, yet could pose a threat to nearby residents. Although the categorical limits indirectly restrict each constituent, those limits were established based on routine emissions over a specific averaging time, and were not predicated on an upset or excursion from normal operations. The Agency does not believe, therefore, that such an upset or excursion should be considered "permitted" within the meaning of section 101(10)(H) of CERCLA.

EPA is soliciting public comment today on three approaches to distinguishing emissions permitted under the CAA from releases that could create potential hazards to surrounding areas and for which timely notification under CERCLA and Title III is necessary. Under the first approach, EPA would interpret the air release exemption in a manner similar to the exemption for releases regulated under the CWA. Thus, air releases would be permitted to the extent that the constituent hazardous substances have been identified, reviewed, and made part of the public record during the permit issuance, State implementation plan, or regulation development process for the pollutant that includes the hazardous substance. The exemption would not extend to releases of constituent hazardous substances of a permitted or regulated pollutant category that are not identified expressly on the record with respect to

the applicable permit or control program. Once the constituent hazardous substance had been identified and reviewed appropriately, the limitation on the category of emissions of hazardous substances would provide the "permit or control regulation" needed for application of the section 101(10)(H) exemption. A specific issue on which the Agency solicits comments is the inclusion of negative determinations under the CAA section 112 program in the exemption.

The second approach would interpret broadly the regulatory programs governing pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under CAA section 109. These programs are developed under CAA section 111 New Source Performance Standards (NSPS) or CAA section 110 State Implementation Plans (SIPs). Under this approach, EPA would distinguish between emissions of hazardous substances that are VOCs and regulated as precursors of ozone, and constituents of the other NAAQS pollutants. For example, emissions of constituents of particulate matter would be considered "subject to a permit or control regulation" and, therefore, exempt from notification requirements. Emissions of individual VOCs, however, would not be considered subject to permit or control regulations solely because they are indirectly controlled by regulations limiting total VOC emissions. These emissions of individual VOCs in amounts equal to or in excess of an RQ, consequently, would be subject to notification requirements.

This approach is based on the recognition that for five of the present NAAQS (sulfur dioxide, particulate matter, nitrogen oxides, lead, and carbon monoxide) the standards in each case are based on the evidence of health effects of those emissions. In contrast, emissions of VOCs are regulated based on their reactivity and consequent contribution to the creation of ambient ozone levels for which NAAQS have been set. In setting the ozone NAAQS or establishing emission limitations for VOCs, no consideration was given to any direct health effects of ambient concentrations of total or any constituent VOC. As a result, interpreting VOC emission limitations to subsume consideration of the possible health effects of constituents appears to be inappropriate. Using this interpretation, a substance would be considered federally permitted if it is a constituent of, and, therefore, limited by regulations or standards for, any of the five pollutants enumerated above, but not if it is limited by standards for VOCs.

Reportable quantities for the purpose of release notification requirements are established to ensure appropriate response to episodic releases of hazardous substances that have potential adverse health and environmental effects. A large release of an individual VOC in a quantity equal to or in excess of an RQ may be within total VOC emission limits and may make a negligible contribution to ozone formation, which is affected by photochemical conditions, meteorology, and the contributions of other VOC sources. Such a release may, nonetheless, potentially endanger human health because of the toxicity of the individual substance.

For example, under CAA section 111, EPA established controls on the rubber tire manufacturing industry limiting VOC emissions for a medium-sized plant to approximately 400 tons per year, or about 1.1 tons per day. Predominant VOCs emitted in the manufacturing process are white gasoline and petroleum naptha. Toluene, xylene, ketones, and esters are also used throughout the industry. (48 FR 2676, September 15, 1983.) A release on one day of an RQ or more of one of these VOC constituents, such as 1000 pounds of toluene, although within the total VOC release limit of approximately 1 ton per day may pose a threat to human health or the environment because the total VOC limitation is based on controlling the formation of ozone, and not on the toxicity of toluene or another of the VOC emission constituents. The Agency would take the position that interpreting NSPS or SIP VOC emission limitations to subsume consideration of the possible health effects of such VOC constituents, and thereby exempt them from notification requirements, is inappropriate. Thus, EPA would require notification of releases of VOC constituents in amounts equivalent to or greater than an RQ under the second approach.

As a third option, EPA could interpret the CAA federally permitted release exclusion to apply only to releases that are subject to a CAA permit or control regulation and that are either the "routine" emissions for which the permit or control regulation was designed or in compliance with a specific standard for release of that substance specified in the permit or regulation. Unpermitted, nonroutine releases would include upsets from such devices as pressure release valves, storage tank reactor vessels, or sudden releases from valve and pipe ruptures, equipment failure, and emergency startups and shutdowns.

EPA requests comments on these alternatives for defining the scope of the air release exemption. Specifically, EPA requests comments distinguishing releases of ozone precursors (VOC) constituents from releases of constituents of other categorical pollutants controlled by NAAQS. EPA also is soliciting comment on the "routine" vs. "nonroutine" distinction and the need to define "routine" in terms fo specific emission points or circumstances, and solicits comments on what emission points should be included. In addition, EPA is concerned that the first approach may lead to overreporting of routine releases subject to adequate control under existing regulatory or permit limits that could divert resources from releases requiring immediate response. EPA solicits information on the number of facilities and types of releases that would require reporting under these approaches, and the types of releases that would be excluded under either approach, particularly with respect to any potentially dangerous releases that may be excluded.

In addition, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) limits for radionuclides are health-based annual limits, whereas radionuclide RQs are reporting triggers based on 24-hour releases. The Agency will require a report if an RQ above any annual NESHAP limit is released in a 24-hour period. The Agency requests comments on the number of facilities and types of releases that may require reporting.[3]

Injection of Materials Related to Development of Crude Oil or Natural Gas Supplies. The injection of materials related to the production of crude oil, natural gas, or water is considered a federally permitted release if the injection material is authorized specifically under applicable State law. Because it is probable that all conceivable injection modes are not considered in State laws, EPA, in the preamble to the May 25, 1983 NPRM, interpreted the section 101(10)(I) provision to exempt only those activities or materials that are authorized

[3] In support of the final rule adjusting the RQ for radionuclides (to be published in 1988), the Agency has prepared an Economic Impact Analysis that estimates the cost to the government and regulated community caused by the revised radionuclide RQ reporting requirements. This document is available for public inspection in Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102RQ-RN).

specifically by State law, rather than those that are not prohibited by State law. This interpretation ensures that the appropriate authorities have consciously considered and intentionally authorized the injection activities and materials that are to be exempt from notification requirements and that the National Response Center will be made aware immediately of the potential need to respond to releases that have not been evaluated previously by a permitting authority.

EPA interprets the section 101(10)(I) exemption to apply only to those materials specifically authorized by State law to be used in activities whose sole purpose is the production of crude oil, natural gas, or water; the recovery of crude oil or natural gas; or the reinjection of fluids brought to the surface from such production. Some commenters objected to this interpretation and instead supported a broader interpretation that would exempt from CERCLA notification all materials used in gas and oil field operations. The National Response Center must be notified in any situation involving the use of injection fluids or materials that are not authorized specifically by State law for purposes of the development of crude oil or natural gas supplies and resulting in a release of a hazardous substance in an amount that equals or exceeds the applicable RQ. This will allow an immediate evaluation of the need for a response.

Introduction of Pollutants into Publicly Owned Treatment Works. A release to a Publicly Owned Treatment Works (POTW) is subject to the federally permitted release exemption if the release is (1) in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c), and (2) into a POTW with an approved local pretreatment program or a § 403.10(e) State-administered local program. One of the commenters on the May 25, 1983 NPRM suggested that the Agency broaden its approach to the POTW exemption to provide that the discharge be in compliance only with general pretreatment requirements and not with site-specific requirements. The Agency believes that for POTW to be considered "federally permitted," not only must the hazardous substance be a pollutant specified in applicable pretreatment standards and the release of the pollutant be in compliance with the categorical pretreatment standards, but the release also must be in compliance with the local limits developed on the basis of the site-specific conditions, because the categorical standards alone may not be adequate to address the impact of pollutants on the POTW. Therefore, even though a release into a POTW is in compliance with the categorical pretreatment standards, the National Response Center must be notified if the release exceeds the local limits by an RQ or more, because the release may cause interference with the POTW's processes or may pass through the POTW to the navigable waters, either of which may result in a situation requiring an emergency response. This exemption applies only to industrial users [4] discharging to POTWs; a POTW is subject to CERCLA reporting and liability provisions if its discharge of a hazardous substance violates its NPDES permit by an RQ or more. POTWs are not required to report hazardous substances that are traveling through their collection systems in quantities that equal or exceed RQs; however, the industrial user is responsible for reporting such releases into the collection system.

Sections 307(b)(1) and (c) of the CWA direct EPA to establish pretreatment standards "to prevent the discharge of any pollutant through treatment works * * * which are publicly owned, which pollutant interferes with, passes through, or is otherwise incompatible with such works." These sections address the problems created by discharges of pollutants from nondomestic sources to municipal sewage treatment works that interfere with the POTW or pass through the POTW to navigable waters untreated or inadequately treated. Pretreatment standards are intended to prevent those problems from occurring by requiring nondomestic users of POTWs to pretreat their wastes before discharging them to the POTW. In 1977, Congress amended section 402(b)(8) of the CWA to require POTWs to help regulate their industrial users by establishing local programs to ensure that industrial users comply with pretreatment standards.

In establishing the national pretreatment program to achieve these pretreatment goals, the Agency adopted a broad-based regulatory approach that implements the statutory prohibitions against pass through and interference at two basic levels. The first is through the promulgation of national categorical standards that apply to certain industrial uses within selected categories of industries that commonly discharge toxic pollutants. Categorical standards establish numerical, technology-based discharge limits derived from an assessment of the types and amounts of pollutant discharges that typically interfere with or pass through POTWs with secondary treatment facilities.

The potential for many pass through or interference problems depends not only on the nature of the discharge but also on local conditions (e.g., the type of treatment process used by the POTW, local water quality, POTW's chosen method for handling sludge), and thus needs to be addressed on a case-by-case basis. Examples of such problems include discharges to a POTW that may consist of pollutants not covered by a categorical standard or from nondomestic sources that are not in one of the industrial categories regulated by the categorical standards. Because categorical standards are established industry-wide, they cannot consider site-specific conditions and therefore may not be adequate to prevent all pass through and interference even for the regulated pollutants. EPA's General Pretreatment Regulations (40 CFR Part 403) address these areas of concern. First, 40 CFR 403.5(b) establishes specific prohibitions that apply to all nondomestic users and are designed to guard against common types of pollutant discharges that may result in interference and pass through (e.g., no discharge of flammable, explosive, or corrosive pollutants). Second, 40 CFR 403.5(a) establishes a general prohibition against pass through and interference that serves as a backup standard to address localized problems that occur. In addition, POTWs must develop and enforce specific local limits as part of their local pretreatment programs to prevent pass through and interference. POTWs not required to develop pretreatment programs also must develop local limits if they have recurring pass through and interference (see 40 CFR 403.5(c)).

The pretreatment standards a POTW user must meet to claim the federally permitted release exemption include both applicable national categorical standards and standards established by local law as described below. Compliance only with the general and specific prohibitions (40 CFR 403.5(a) and (b)) of the general pretreatment regulations is insufficient to qualify a release as federally permitted.

Only local limits applicable to the pollutant, developed in accordance with 40 CFR 403.5(c), and designed to implement the general prohibition against interference and pass through (§ 403.5(a)), can qualify the release of such pollutant as a federally permitted

[4] "Industrial users," as the term is used in this discussion, includes mobile sources discharging hazardous substances to a POTW.

release. The development of local limits under 40 CFR 403.5(c) involves three basic steps. First, a POTW must determine which, if any, of the pollutants discharged by its industrial users have a reasonable potential to pass through or interfere with the POTW. For each of the pollutants the POTW concludes may be of concern, the POTW must then determine the maximum amount of the pollutant it can accept (maximum headworks loading) and still prevent the occurrence of pass through or interference. Finally, after maximum allowable headworks loadings are determined for each of the pollutants of concern, the POTW must implement a system of local limits applicable to industrial users to assure that these loadings will not be exceeded.

EPA believes that only local limits that have been developed based upon procedures that evaluate the site-specific characteristics and treatment capabilities of a POTW should qualify the release of the pollutant for the exemption. Such an extensive analysis is needed to assure that pass through and interference problems do not arise. A discharge of a pollutant by an industrial user in compliance with a local limit not designed using these procedures may not address the statutory prohibitions against pass through and interference or provide the requisite degree of environmental protection to qualify for the federally permitted release exemption.

Thus, a release that exceeds by an RQ or more an applicable categorical pretreatment standard or a local limit developed in accordance with 40 CFR 403.5(c) must be reported. Moreover, the absence of a categorical pretreatment standard or a local limit for a specific pollutant precludes coverage for releases of that pollutant under the federally permitted release exemption. If an industrial user releases an RQ or more of a hazardous substance into a POTW that has not set a local limit for such a substance, or for which there is no limit based on a categorical standard, then the release is not federally permitted and is subject to CERCLA reporting and liability provisions.

Furthermore, the release of a pollutant to a POTW only would qualify for the federally permitted release exemption if (1) the POTW has a local pretreatment program approved by the "approved authority" (as defined in § 403.3(c)), or (2) a State, in lieu of the municipality, is implementing a pretreatment program for that POTW pursuant to 40 CFR 403.10(e).

Section 101(10)(J) provides that the pretreatment program must be "submitted by a State or municipality for Federal approval." The Agency interprets this provision to mean that the program not only must be submitted for approval but must be approved. A strict reading of the statutory language would be contrary to the expressed congressional intent that discharges of hazardous substances into sewer systems qualify as federally permitted releases only if they are authorized under a pretreatment program (S. Rep. No. 848, 96th Cong., 2nd Sess. 48 (1980)). The fact that a POTW has submitted a program for approval does not necessarily mean the program is adequate to control the introduction of pollutants from nondomestic users of the POTW. Such a program may not be approved by the approval authority due to major deficiencies. For the discharge to be a federally permitted release, therefore, it must be specifically regulated in an approved program, a program that the approval authority has determined is consistent with the federally mandated minimum standard.

An approved program may be (1) designed and implemented locally by a POTW and approved by either EPA or an EPA-approved State pretreatment program, or (2) designed and implemented by an EPA-approved State pretreatment program. EPA approval of a State pretreatment program pursuant to section 402(b) of the CWA would not automatically qualify a release to a POTW in that State as federally permitted. The local pretreatment program must be approved either by EPA or by an EPA-approved State program. Generally, EPA approval of a State pretreatment program merely changes the approval authority for the POTW programs from EPA to the EPA-approved State pretreatment program. The approved State has primary responsibility for requiring local POTWs to develop and implement a pretreatment program to regulate users directly. The fact that a State pretreatment program has been approved by EPA does not in and of itself change the quality or approvability of local POTW programs. POTWs in approved States would still need to develop local pretreatment programs and receive pretreatment program approval if they have not done so already. Thus, to satisfy the federally permitted release exemption, individual approval of each POTW pretreatment program is necessary (except for a State administered § 403.10(e) program as described below).

Section 403.10(e) allows the State in lieu of the POTW to assume responsibility for developing and implementing POTW pretreatment program requirements. Because the § 403.10(e) program must meet the same standard as would be required for pretreatment programs developed by a municipality (§ 403.8(f)), EPA believes that the § 403.10(e) programs are the State pretreatment programs Congress intended to include under section 101(10)(J).

In the event that a State's § 403.10(e) program does not extend to all its POTWs, only those releases to POTWs for which the State has implemented the pretreatment program pursuant to § 403.10(e) would qualify as federally permitted. If a POTW is not regulated directly by its State NPDES program, the POTW nevertheless must implement an approved local pretreatment program in order for the discharges of industrial users to qualify for the federally permitted release exemption.

In summary, for a release to a POTW to be subject to the federally permitted release exemption, the release must be: (1) In compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c), and (2) into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

One of the commenters on the May 25, 1983 NPRM stated that discharges into a POTW are transfers between facilities, not "into the environment," and therefore all discharges into POTWs should be exempt from CERCLA reporting. The commenter's approach to defining "into the environment" is not consistent with the approach in today's proposal. To determine whether its release is federally permitted, therefore, an industrial user should measure its discharge at the point the substance leaves the industrial user's facility. In the case of indirect dischargers, the release should be measured when it leaves the discharger's building. Mobile sources should measure the discharge at the point it is released into the POTW, which will be at the headworks in most cases. Industrial users are not required under CERCLA to conduct monitoring activities different from those required by the applicable pretreatment program.

Releases of Source, Byproduct, or Special Nuclear Material.

Radionuclides (which include source, byproduct, and special nuclear material) are listed generically under section 112 of the CAA and are therefore considered hazardous substances under CERCLA. CERCLA section 101(22)(C), however, excludes from the definition of "release" the discharge of:

source, byproduct, or special nuclear material from a nuclear incident, as those terms are

defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 [UMTRCA] * * *.

It should be noted that releases of source, byproduct, or special nuclear material from processing sites designated under section 102(a)(1) or section 302(a) UMTRCA are exempted from CERCLA response action provisions but not from reporting requirements under CERCLA section 103.

CERCLA section 101(10)(K) includes within the definition of federally permitted release, releases of source, byproduct, or special nuclear material that comply with the conditions of a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act (AEA). Therefore, releases of source, byproduct, or special nuclear material that exceed the licensed or permitted levels by an RQ or more, and that are not excluded by section 101(22), must be reported immediately to the National Response Center.

Under the AEA, the Nuclear Regulatory Commission is responsible for issuing licenses for the possession and use of source, byproduct, and special nuclear material. States that have entered into an agreement with the Nuclear Regulatory Commission (i.e., Agreement States) are also authorized under the AEA to issue licenses for the possession and use of source, byproduct, or special nuclear material. Releases of source, byproduct, or special nuclear material in compliance with licenses issued by the Nuclear Regulatory Commission or Agreement States are federally permitted releases under CERCLA section 101(10)(K).

The regulations of the Nuclear Regulatory Commission contain several important exemptions from their provisions, some of which are based on the small quantities of material involved or the low levels of radioactivity the materials emit. The Nuclear Regulatory Commission has developed "exempted quantities" for purposes of identifying facilities that are not subject to Commission licensing requirements. These quantities are smaller than the radionuclide RQs and, therefore, releases from these facilities will not be reported under CERCLA. Nevertheless, these releases are not federally permitted under CERCLA and, therefore, these facilities are subject to the CERCLA section 107 liability provisions.

Some releases of source, byproduct, and special nuclear material may comply with licenses, permits, orders, or regulations issued under the AEA through provisions administered not by the Commission or its Agreement States, but by DOE, the Department of Defense, or EPA. For example, DOE governs its radiation protection activities under the AEA by a series of internal orders. When such orders are issued under DOE's AEA authority and releases of source, byproduct, or special nuclear material are in compliance with the applicable order(s), these releases are federally permitted under section 101(10)(K).[5] The Department of Defense issues regulations under the AEA governing weapons and reactors within its jurisdiction, and EPA issues regulations under the AEA for certain operations involving radioactive material (e.g., 40 CFR Parts 190, 191, and 192). Releases of source, byproduct, or special nuclear material in compliance with these regulations are also federally permitted under section 101(10)(K). Any release that is an RQ or more above federally permitted levels, however, would be subject to the CERCLA notification requirements.

Further clarification is needed regarding the applicability of the definition of federally permitted releases to a fourth category of radioactive material called naturally occurring and accelerator-produced radioactive material (NARM). The AEA gives DOE broad authority to control its radiation-related activities and to protect public health and safety and the environment. This authority applies to activities involving NARM, as well as activities involving source, byproduct, and special nuclear material. CERCLA section 101(10)(K) refers, however, only to releases of source, byproduct, and special nuclear material. Thus, it provides no basis for exempting DOE's NARM releases from CERCLA's reporting and liability provisions. Furthermore, the AEA currently does not give authority to the Nuclear Regulatory Commission to license NARM, only source, byproduct, and special nuclear material. Although Agreement States may regulate NARM, this regulatory authority is not federally derived. Therefore, releases of NARM are not considered federally permitted under section 101(10)(K). Certain NARM releases are, however, considered federally permitted under other CERCLA sections. For example, air releases of NARM that are in compliance with NESHAPs are federally permitted under section 101(10)(H).

In making this finding with respect to NARM and the definition of federally permitted releases in section 101(10)(K), the Agency wishes to differentiate between NARM, source material, and byproduct material. Both source and byproduct material are defined under the AEA to include certain naturally occurring radionuclides. Specifically, source material is natural uranium, natural thorium, or ores that contain 0.05 percent or more (by weight) of natural uranium or thorium. Byproduct material is defined to include naturally occurring decay products of uranium or thorium when those decay products are associated with mill tailings. The exclusion of NARM from the definition of federally permitted releases under section 101(10)(K) applies only to those naturally occurring radionuclides that do not qualify as either source or byproduct material. For example, naturally occurring radium used in medical and well logging devices does not meet the definition of source or byproduct material and, therefore, releases of radium from these devices does not qualify for the reporting exemption under section 101(10)(K).

All of the commenters on the radionuclides exemption felt that a broader exemption is warranted. Some commenters suggested that reports of releases currently required by the Nuclear Regulatory Commission are sufficient and comprehensive because they enable the Commission to determine the need for and the adequacy of response. These commenters felt that any additional reports to the National Response Center would be an unnecessary burden. EPA expects that most releases involving radionuclides will be excluded from the definition of release, will be federally permitted, or will involve a quantity smaller than the RQ. (The Agency published a rule that proposed RQs for radionuclides on March 16, 1987 in 52 FR 8172; these RQs are being revised and the Agency expects to publish final RQs for radionuclides in 1988.) EPA believes, however, that the reporting requirements imposed on the remaining releases of radionuclides, including

[5] Under the DOE procurement regulations, provisions of the relevant DOE environmental and safety orders must be incorporated by reference into contracts entered into with managers and operators of DOE facilities (see 48 CFR 970.2303-2, 970.5204-2, 970.5104-26(b)). By virtue of their incorporation into binding contracts, the provisions of the DOE orders become binding on the managers and operators of DOE facilities and are enforceable by DOE on the basis of the facility management and operation contracts.

releases not subject to or in compliance with applicable permits, regulations, or orders, are essential to mitigate the risk to public health or welfare or the environment posed by such releases.

III. Notification for Certain Types of Releases

A. In General

This section addresses several recurring questions not related specifically to the definition of "federally permitted release" but that arise under the CERCLA section 103(a) reporting requirements. One such question involves releases to engineered structures designed specifically to prevent materials from reaching the land surface. The issues involve both interpretation of the phrase "release into the environment" and the appropriateness of CERCLA notification requirements for releases to such secondary containment devices. The Agency solicits comments on the following issues.

In the preamble to the April 4, 1985 final rule adjusting RQs for 340 CERCLA hazardous substance, EPA stated:

> Hazardous substances may be released "into the environment" even if they remain on plant or installation grounds. Examples of such releases are spills from tanks or valves onto concrete pads or into ditches open to the outside aid, releases from pipes into open lagoons or ponds, or any other discharges that are not wholly contained within buildings or structures. Such a release, if it occurs in a reportable quantity (e.g., evaporation of an RQ into the air from a dike or concrete pad), must be reported under CERCLA. On the other hand, hazardous substances may be spilled at a plant or installation but not enter the environment, e.g., when the substance spills onto the concrete floor of an enclosed manufacturing plant. Such a spill would need to be reported only if the substances were in some way to leave the building or structure in a reportable quantity. (Note, however, that the federal government may still respond and recover costs where there is a threatened release into the environment.) 50 FR 13462.

In applying the phrase "into the environment" to releases to secondary containment devices, EPA believes that a release inside a building or structure is not a release "into the environment" unless the spilled substance leaves the building.

On one hand, a release to a secondary containment device that is not wholly contained and that is located outside of a building or structure is "into the environment." Examples of releases to such devices that illustrate both the potential for a serious problem and an existing serious situation have been brought to the Agency's attention. These include a release of hydrochloric acid to a dike that would have overflowed in a heavy rain, and radioactive contamination of water supplies apparently resulting from an improperly functioning secondary containment device at a nuclear facility.

On the other hand, it has been suggested that where engineered structures are open to the air, releases into such structures should be exempt from CERCLA notification unless an RQ or more of the substance reaches any ground or surface waters or land surface or evaporates into the ambient air. Releases to such structures may include such occurrences as releases onto concrete pads, secondary containment devices with sealed floors around storage tanks, or drip pans used to catch minor hose or line drainage.

The Agency is interested in receiving comments and data discussing the circumstances under which immediate notification of releases into secondary containment devices would not provide useful information for Federal response purposes under CERCLA. EPA is particularly interested in information on the significance of the issue, specific examples of procedures followed where there is a release to a secondary containment device and techniques used to prevent releases from such devices, data discussing the integrity of secondary containment devices, and suggestions on the appropriate means of eliminating any such unnecessary reporting. If the Agency decides to exempt from CERCLA notification certain releases into secondary containment devices, a demonstration may be required to show that the device is sufficiently protective and reliable.

B. PCB Waste Disposal

A second issue concerning the necessity for section 103 notification is whether approved polychlorinated biphenyl (PCB) disposal by incineration, landfilling, or alternate methods needs to be reported as a release under section 103. Because PCB disposal approvals under the Toxic Substances Control Act (TSCA) are not included in the CERCLA section 101(10) definition of federally permitted release, EPA does not believe that it has the authority to apply that exemption to such approvals.

At the same time, however, EPA does not believe that notification under section 103 of CERCLA provides any significant additional benefit so long as the disposal facility is in substantial compliance with all applicable regulations and approval conditions. The PCB regulations under TSCA, 40 CFR Part 761, require owners or operators of PCB disposal facilities, incinerators, chemical waste landfills, and high efficiency boilers to obtain written EPA approval, based on compliance with detailed technical requirements designed to ensure proper disposal, before accepting PCB wastes. The TSCA approval process is designed to ensure that the operation of PCB disposal facilities does not present an unreasonable risk of injury to health or the environment from PCBs. In addition, 40 CFR Part 761, Subpart J, requires PCB disposal facility owners or operators to monitor carefully the facility's inventory and operation, maintain detailed records for periods of 5 to 20 years, and report under certain circumstances. The TSCA regulations provide the Federal government with the information necessary to determine whether an emergency response to a PCB disposal is required. Today's proposal not to require CERCLA reporting for EPA-approved PCB disposals is consistent with the overall objective of the CERCLA notification requirements. Therefore, EPA will not require reporting under section 103(a) of the approved, proper disposal of PCB wastes into a disposal facility. The Agency requests comments on this proposal to exempt administratively these releases from CERCLA notification.

A party responsible for a release of PCB wastes that need not be reported under CERCLA, however, remains liable for the costs of cleaning up the release and for any natural resource damages caused by the release. In addition, where the disposer knows that the facility is not in compliance with applicable regulations and approved conditions under TSCA, disposal of an RQ or more of PCB waste must be reported to the National Response Center. Likewise, spills and accidents occurring during disposal and outside of the approved operation and that result in releases of an RQ or more of PCB waste must be reported to the National Response Center. Finally, PCB releases of an RQ or more from a TSCA-approved facility (as opposed to disposal into such a facility) must be reported under CERCLA.

IV. Discharges to POTW's

The Agency recognizes that the regulation implementing CWA section 311 for hazardous substance discharges must be revised to be consistent with the Agency's regulatory approach taken under CERCLA section 101(10)(J). Under CERCLA seciton 101(10)(J), an indirect discharge to a POTW must be subject to and in compliance with categorical pretreatment standards and local limits applicable in an approved local

pretreatment program (see discussion under Section III of today's preamble). All indirect dischargers, ie., both mobile and stationary sources, are subject to the same requirements for their discharges to be considered federally permitted releases.

Under 40 CFR 117.13, mobile sources discharging industrial waste are not subject to CWA section 311 coverage if the mobile source has contracted with, or otherwise received written permission from the POTW to discharge a designated quantity of industrial waste treated to comply with effluent limitations (under CWA sections 301, 302, or 306) or pretreatment standards (under CWA section 307). Indirect dischargers are not addressed under § 117.13. Paragraph (a) of § 117.13 was reserved to provide the conditions under which indirect discharges are subject to CWA section 311.

The Agency is proposing to amend 40 CFR 117.13 to state that indirect discharges are not subject to section 311 coverage if the indirect discharge is in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and is into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program. EPA also is proposing to revise paragraph (b) to apply the same conditions to mobile sources as would be applied to indirect discharges under paragraph (a). The Agency requests comments on this proposal.

V. Regulatory Analyses

A. Executive Order No. 12291

Rulemaking protocol under Executive Order (E.O.) 12291 requires that proposed regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's regulation is nonmajor, because adoption of the rule will result in zero costs and will not cause any of the significant adverse effects mentioned in (3) above. The Background Document for the Proposed Regulation on Federally Permitted Releases, available for inspection in the public docket, shows that the proposed rule is simply a clarification of existing statutory requirements.

This rule has been submitted to OMB for review, as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Today's proposed rule is not expected to significantly impact small entities because the rule proposes simply to clarify the existing statutory requirement. EPA certifies, therefore, that this proposed regulation will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

There are no reporting or recordkeeping provisions included in this proposed rule that require approval from the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 117

Hazardous Substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides, and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

40 CFR Part 355

Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity.

Dated: July 11, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the premble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 1321 and 1361.

2. Section 117.12 is revised to read as follows:

§ 117.12 Applicability to discharges from facilities with NPDES permits.

(a) This regulation does not apply to:

(1) Discharges in compliance with a permit under section 402 of the Clean Water Act;

(2) Discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit; or

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

(b) A discharge is "in compliance with a permit issued under section 402 of the Clean Water Act" if the permit contains an effluent limitation specifically applicabale to the substance discharged or an effluent limitation applicable to another waste parameter that has been specifically identified in the permit as intended to limit such substance, and the discharge is in compliance with the effluent limitation.

(c) A discharge results "from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit" where:

(1) The permit application, the permit, or another portion of the public record contains documents that specifically identify:

(i) The substances and the amounts of substances; and

(ii) The origin and source of the substances; and

(iii) The treatment that is to be provided for the discharge either by:

(A) An on-site treatment system separate from any treatment system treating the permittee's normal discharge; or

(B) A treatment system that is designed to treat the permittee's normal discharge and that is additionally capable of treating the identified amount of the identified substance; or

(C) Any combination of the above; and

(2) The permit contains a requirement that the substances and the amounts of the substances, as identified in §117.12(c)(1)(i) and §117.12(c)(1)(ii), be treated pursuant to § 117.12(c)(1)(iii) in the event of an on-site release; and

(3) The treatment to be provided is in place.

(d) A discharge is a "continuous or anticipated intermittent" discharge "from a point source, identified in a permit or permit application under section 402 of the Clean Water Act," and "caused by events occurring within the scope of relevant operating or treatment systems", whether or not the discharge is in compliance with the permit, if:

(1) The hazardous substance is discharged from a point source for which a valid permit exists or for which a permit application has been submitted; and

(2) The discharge of the hazardous substance results from:

(i) The contamination of noncontact cooling water or storm water, provided that such cooling water or storm water is not contaminated by an onsite spill of a hazardous substance; or

(ii) A continuous or anticipated intermittent discharge of process waste water, and where the discharge originates within the manufacturing or treatment systems; or

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

3. Section 117.13 is revised to read as follows:

§ 117.13 Applicability to discharges from other facilities.

(a) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from stationary industrial users, so long as the discharge is:

(1) In compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c); and

(2) Into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

(b) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from a mobile source, so long as the mobile source can show that:

(1) Prior to accepting the substance from an industrial discharger, the substance being discharged was in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c); and

(2) The substance is being discharged into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

4. The authority citation for Part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

5. Section 302.3 is amended by adding in alphabetical order the definition "federally permitted release" and by revising the introductory text of the definition "release" to read as follows:

§ 302.3 Definitions.

* * * * *

"Federally permitted release" means

(1) a discharge in compliance with a permit under section 402 of the Clean Water Act;

(2) A discharge resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act and subject to a condition in such permit;

(3) A continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which is caused by events occurring within the scope of relevant operating or treatment systems;

(4) A discharge in compliance with a legally enforceable Federal or State, individual or general permit under section 404 of the Clean Water Act;

(5) A release in compliance with a legally enforceable Federal or State final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such a release;

(6) Any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972;

(7) Any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator) pursuant to Part C of the Safe Drinking Water Act;

(8) Any emission of a substance into the air which is named specifically or is included in a specifically named group of substances subject to and in compliance with a permit or control regulation under section 111, section 112, Title I Part C, Title I Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator) when such permit or control regulation is specifically designed to limit or eliminate such emission of a designated hazardous pollutant or a criteria pollutant, including any schedule or waiver granted, promulgated, or approved under these sections;

(9) Any injection of fluids or other materials specifically authorized under applicable State law: solely for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water; solely for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas; or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected;

(10) The introduction of any pollutant into a publicly owned treatment works (POTW) when such pollutant is specified in and in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program; and

(11) Any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or other issued pursuant to the Atomic Energy Act of 1954.

Federally permitted releases do not include releases exempt from regulation under the authority of one of the cited statutes; releases not in compliance with the applicable permit limit or condition, license, regulation, order, standard, or program; or releases into a medium other than that covered in the applicable

permit, license, regulation, order, standard, or program.

* * * * *

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes

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* * * * *

6. Section 302.6 is amended by adding new paragraphs (e) and (f) as follows:

§ 302.6 Notification requirements.

* * * * *

(e) Whenever a release of a hazardous substance exceeds its federally permitted level as defined under § 302.3 ("federally permitted release") by a reportable quantity or more, notification shall be made for such release in accordance with the requirements of this section or, if applicable, § 302.8. Where numerical levels for hazardous substances are not specified, any release not in compliance with the terms, related to the character or quantity of the release, of the applicable permit, license, regulation, order, standard or program that equals or exeeds a reportable quantity must be reported to the National Response Center in accordance with this section or, if applicable, § 302.8.

(f) Notification is not required for the disposal of polychlorinated biphenyl (PCB) approved by EPA and in substantial compliance with the applicable Toxic Substance Control Act (TSCA) regulations, 40 CFR Part 761, and approval conditions.

7. Section 302.7 is amended by revising paragraph (a)(3) to read as follows:

§ 302.7 Penalties.

(a) * * *

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he or she has knowledge of such release or who submits in such a notification any information which he or she knows to be false and misleading shall be subject to all of the sanctions, including criminal penalties, set forth in section 103(b) of the Act.

* * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

8. The authority citation for Part 355 is revised to read as follows:

Authority: 42 U.S.C. 11002 and 11048.

9. Section 355.40 is amended by revising paragraph (a) to read as follows:

§ 355.40 Emergency release notification.

(a) *Applicability.* (1) The requirements of this section apply to any facility:

(i) At which a hazardous chemical is produced, used, or stored; and

(ii) At which there is a release of a reportable quantity of any extremely hazardous substance of CERCLA hazardous substance.

(2) This section does not apply to:

(i) Any release that results in exposure to persons solely within the boundaries of the facility;

(ii) Any release that is a "federally permitted release," as defined as follows:

(A) A discharge in compliance with a permit under section 402 of the Clean Water Act;

(B) A discharge resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit;

(C) A continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which is caused by events occurring within the scope of relevant operating or treatment systems;

(D) A discharge in compliance with a legally enforceable Federal or State, individual or general permit under section 404 of the Clean Water Act;

(E) A release in compliance with a legally enforceable Federal or State final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such a release;

(F) Any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972;

(G) Any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator) pursuant to Part C of the Safe Drinking Water Act;

(H) Any emission of a substance into the air which is named specifically or is included in a specifically named group of substances subject to and in compliance with a permit or control regulation under section 111, section 112, Title I Part C, Title I Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator) when such permit or control regulation is specifically designed to limit or eliminate such emission of a designated hazardous pollutant or a criteria pollutant, including any schedule or waiver granted, promulgated, or approved under these sections;

(I) Any injection of fluids or other materials specifically authorized under applicable State law: solely for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water; solely for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas; or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected;

(J) The introduction of any pollutant into a publicly owned treatment works (POTW) when such pollutant is specified in and in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and into a POTW with an approved pretreatment program or a 40 CFR 403.10(e) State administered local program; and

(K) Any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(iii) Federally permitted releases do not include releases exempt from regulation under the authority of one of the cited statutes; releases not in compliance with the applicable permit limit or condition, license, regulation, order, standard, or program; or releases into a medium other than that covered in the applicable permit, license, regulation, order, standard, or program.

* * * * *

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